

### **REMARKS**

This responds to the Office Action dated on October 12, 2007.

Claims 1-3 are amended, no claims are canceled, and no claims are added; as a result, claims 1-17 remain pending in this application.

#### **Information Disclosure Statement**

The Office Action states that the Information Disclosure Statement (IDS) filed July 12, 2007 contains portions that have not been considered. The Office Action asserts that copies of Office Actions are unsuitable as Non-Patent Literature. However, the Office Action provides no reasoning why the Office Actions included in the IDS are unsuitable. Applicant respectfully submits that in view of the decision by the Court of Appeals for the Federal Circuit in *McKesson Information Systems v. Bridge Medical, Inc.* 487 F.3d 897 (Fed Cir. 2007) that Office Actions are in fact suitable for inclusion in an IDS as Non-Patent Literature. Applicant respectfully requests either consideration of the Office Actions provided in the IDS or a statement providing an official position of the United States Patent and Trademark Office as to why the Office Actions are unsuitable for inclusion in an IDS.

#### **§102 Rejection of the Claims**

Claims 1-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Frank et al. (U.S. Patent No. 6,532,494). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *M.P.E.P* § 2131. To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter. *PPG Industries, Inc. V. Guardian Industries Corp.*, 75 F.3d 1558, 37 USPQ2d 1618 (Fed. Cir. 1996). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and

every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully submits that claims 1-17 as amended contain elements not found in Frank.

For example, claim 1 as amended recites that membership in a group is established by messages “communicated between the plurality of nodes in the network utilizing a proposal message including data defining a plurality of relationships between the plurality of nodes and sent by a coordinator node for receipt by each node in the plurality of nodes and a commit message sent by the coordinator node to each node in the plurality of nodes...” The Office Action states that Frank, at column 5, lines 44-62, and at column 2, lines 5-13 discloses a heartbeat message that is a proposal message, stating that “if a node fails to receives heartbeat messages from its previous node, a reconfiguration message is then send [sic] by that node to all other nodes; once all other nodes acknowledge their existence in the group, the node membership is once again reconciled.” While Frank discloses the use of a heartbeat message, Applicant notes that a heartbeat message is different from the proposal and commit messages recited in Applicant’s claims. As stated in Frank, a heartbeat message is one that is intended to inform “each other node that it is operating and is still a member of the network cluster” (see Frank at column 1, line 66 to column 2, line 1). This is unlike Applicant’s claims, which recite a proposal message that includes data defining a plurality of relationships between the plurality of nodes. This is quite different from the heartbeat message of Frank, which merely discloses that a single node is operating and is still a member of the cluster. Frank does not disclose any message that defines a plurality of relationships between the nodes in a cluster. The “cluster reconfiguration message” of Frank merely signals the need to redetermine cluster membership, it does not appear to be involved in determining which nodes are members of the cluster. Thus Frank fails to disclose any message that includes data defining a plurality of relationships between a plurality of nodes. In view of the above, Applicant respectfully submits that Frank fails to disclose each and every element of Applicant’s claim 1. As a result, Frank does not anticipate claim 1. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 1.

Claims 2 and 3 recite similar language with respect to a proposal message that includes data defining a plurality of relationships between a plurality of nodes. Applicant respectfully submits that claims 2 and 3 are not anticipated by Frank for the same reasons as discussed above with respect to claim 1. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2 and 3.

Claims 4-7 depend either directly or indirectly from claim 1; claims 8-12 depend either directly or indirectly from claim 2; and claims 13-17 depend either directly or indirectly from claim 3. These dependent claims inherit the elements of the respective base claims 1-3, including elements directed to a proposal message including data defining a plurality of relationships between the plurality of nodes, and are therefore not anticipated by Frank for at least the reasons discussed above regarding their respective base claims. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4-7, 8-12 and 13-17.

Additionally, claims 5, 9 and 14 recite “the coordinator node comprises a longest running node in the plurality of nodes.” The Office Action asserts that Frank, at column 7, lines 21-27 discloses the recited language. Applicant respectfully disagrees with this interpretation of Frank. The cited section of Frank states that “one method for selecting a coordinator node is to select the first node to join the cluster.” Frank further states that “an alternate method is to select the node having the highest, or lowest, node id.” Applicant notes that neither of these two mechanisms is necessarily the same as selecting a longest running node. The assignment of node ids is not necessarily based on the length of time a node is running. Similarly, the first node to join a cluster may be first based on its proximity to other nodes or its network response time, and may have nothing to do with how long the node has been running. Selecting a longest running node has the potential advantage of selecting a stable node as the coordinator node. In view of the above, Frank does not disclose selecting a longest running node as a coordinator node. Therefore Frank does not anticipate claims 5, 9 or 14. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 5, 9 and 14.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

Serial Number: 09/811,158

Filing Date: March 16, 2001

Title: MAINTAINING MEMBERSHIP IN HIGH AVAILABILITY COMPUTING SYSTEMS

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**CONCLUSION**

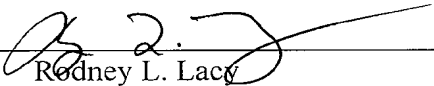
Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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